

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

| | | |
|--|---|------------------------------|
| PERIMETER MALL, LLC, |) | |
| |) | |
| |) | |
| Plaintiff, |) | CIVIL ACTION FILE NO. |
| |) | 1:21-cv-02091-SCJ |
| |) | |
| vs. |) | |
| |) | |
| RETAILING ENTERPRISES, LLC, d/b/a INVICTA |) | |
| |) | |
| Defendant. |) | |

AMENDED COMPLAINT

COMES NOW Perimeter Mall, LLC, a Delaware limited liability company (hereinafter “Perimeter Mall” or “Landlord”), and states as its Amended Complaint the following:

1.

Subject-matter jurisdiction of this Dispossession Proceeding is appropriate in the State Court of DeKalb County, Georgia.

2.

There is an absence of subject-matter jurisdiction in the United States District Court for the Northern District of Georgia.

3.

Venue is appropriate for this Dispossessory Proceeding in the State Court of DeKalb County, Georgia.

4.

Venue is not appropriate in the United States District Court for the Northern District of Georgia.

5.

Perimeter Mall filed its original Complaint on April 30, 2021 in the State Court of DeKalb County, Case Number 21SD00046. A copy of which is attached hereto as Exhibit “A” and, except for the following is restated in its entirety and incorporated herein.

6.

Said original Complaint was signed by Perimeter Mall’s attorney, Luke A. Kill on April 30, 2021. The notary, Amy M. King witnessed and notarized Luke A. Kill’s signature but failed to notice that the sworn and subscribed statement listed above her signature erroneously stated May 30, 2021 instead of the correct date of April 30, 2021. A Declaration of Amy M. King is attached hereto as Exhibit “B” and is incorporated herein.

7.

The correct date of the Notarized signature on the Complaint in the Dispossessory Case Number 21SD00046 is April 30, 2021 and Plaintiff so Amends its Complaint to reflect this fact and pleading.

8.

By filing this Amended Complaint, Plaintiff does not waive, and specifically reserves, all subject matter jurisdictional defenses and arguments that this State Court Dispossessory Action was improperly removed to the United States District Court for the Northern District of Georgia.

This 15th day of June, 2021.

/s/ Luke A. Kill

Luke A. Kill

Georgia Bar No. 457555

Attorney for Plaintiff

Andre Kill & McCarthy, LLP

244 Roswell Street

Suite 1000

Marietta, Georgia 30060

(404) 653-3005 (Direct)

(404) 653-0338 (Facsimile)

lkil@ablaw.net

LOCAL RULE 7.1(D) CERTIFICATION

Pursuant to Local Rule 7.1(D), I hereby certify that the foregoing has been prepared with Times New Roman, 14-point font.

/s/ Luke A. Kill

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| |) | |
| Defendant. |) | |

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 15th day of June, 2021, I served a true and correct copy of the foregoing document via the CM/ECF system, via electronic mail, and by depositing a copy into the United States mail, with sufficient postage affixed thereto, to counsel of record, addressed as follows:

**Jason A. Morris
Carlton Fields, P.A.
1201 West Peachtree Street, Suite 3000
Atlanta, Georgia 30309-3455**

/s/ Luke A. Kill

Luke A. Kill
Georgia Bar No. 457555
Attorney for Plaintiff

Andre Kill & McCarthy, LLP

244 Roswell Street

Suite 1000

Marietta, Georgia 30060

(404) 653-3005 (Direct)

(404) 653-0338 (Facsimile)

lkil@ablaw.net

EXHIBIT “A”

STATE

COURT OF DEKALB COUNTY

DeKalb Courthouse - Civil Division
556 N. McDonough Street, Room 230
Decatur, GA 30030
404-371-2261

Perimeter Mall, LLC
c/o Luke A. Kill
Andre Kill & McCarthy, LLP
244 Roswell Street, Suite 1000
Marietta, Georgia 30060
PLAINTIFF'S NAME/ADDRESS/PHONE/EMAIL

21SD00046

CASE #

V.
Retailing Enterprises, LLC d/b/a Invicta
Perimeter Mall, Space #2230
4400 Ashford Dunwoody Rd., Atlanta, GA 30346
DEFENDANT'S NAME & ADDRESS

Luke A. Kill, lkill@ablaw.net, 404-653-6005
Andre Kill & McCarthy, LLP
244 Roswell Street, Ste. 1000
Marietta, Georgia 30060
PLAINTIFF'S ATTORNEY NAME/ADDRESS/PHONE/EMAIL

- Defendant is in possession as tenant of the premises at the address in DeKalb County as stated above.
- Affiant is the ☐ Owner ☒ Attorney ☐ Agent ☐ Tenant and owner of said premises.
- Defendant ☒ fails to pay the rent which is now past due;
☐ holds the premises over and beyond the term for which they were rented or leased to him;
☐ is a tenant at sufferance;
☐ other grounds: _____
- Plaintiff desires and has demanded possession of the premises.
- Defendant has failed and refused to deliver possession of the premises.

Sworn and subscribed before me this 30th day of May, 2021
by: Amy M. King
Notary Public/My commission expires 05-02-2022

WHEREFORE, Plaintiff DEMANDS

- Possession of the premises.
- Past due rent of \$ 97,644.13 for the month(s) prior to 1/2021-4/2021
- Rent accruing up to the date of judgement of vacancy at the rate of \$ 9,067.30 per month
- Other: \$9,700.00 in attorney's fees

By affixing this electronic verification, oath, or affidavit to the pleading(s) submitted to the court and attaching my electronic signature hereon, I do hereby swear or affirm that the statements set forth in the above pleading(s) are true and correct.

/s/ Luke A. Kill 4/30/2021 lkill@ablaw.net 404-653-3005
PLAINTIFF(S) OR AFFIANT DATE PHONE NUMBER / EMAIL ADDRESS

SUMMONS

TO THE MARSHAL of the State Court of DeKalb County or his lawful deputies, GREETINGS:

The defendant herein is hereby commanded and required personally or by attorney to file with the Clerk of the State & Magistrate Court of DeKalb County, 2nd Floor, Suite 270, Administrative Tower, DeKalb County Courthouse, 556 N. McDonough St., Decatur, Georgia within seven (7) days from the date of service of the within affidavit and summons (or on the first business day thereafter if the seventh day falls on Saturday, Sunday or legal holiday) then and there to answer said affidavit either online, in writing or orally (orally means in front of a deputy clerk). If no Answer is made, a writ of possession shall issue instant. WITNESS the Honorable Chief Judge of said Court. The above affidavit was sworn to and subscribed before the undersigned Deputy Clerk by affiant as provided by O.C.G.A. § 44-7-50 and summons issues pursuant thereto.

This _____ day of 4/30/2021

DEPUTY CLERK, _____ Court of DeKalb County

PRIVATE PROCESS SERVER AFFIDAVIT OF SERVICE

I have served the foregoing Affidavit and Summons on the Defendant(s) by delivering a copy of same:

☐ PERSONALLY ☐ DEFENDANT NOT FOUND AT WITHIN ADDRESS ON SAID SUMMONS AND AFFIDAVIT

☐ NOTORIOUSLY (NAME) _____ Age _____ Wt. _____ Ht. _____

☐ TACK & MAIL. Posting a copy to the door of the premises and depositing a copy in the U.S. Mail, First Class in an envelope properly addressed after attempting personal service. Said copy containing notice to the Defendant(s) to answer at the hour and place in said summons.

DATE OF SERVICE: _____

DEFENDANT TO ANSWER ON OR BEFORE: _____

PROFESSIONAL PROCESS SERVER

NOTARY

ANSWER

To file your answer online visit www.AnswerDispo.com and enter your case number. All Answers must be electronically filed by 11:59PM on or before the last day to answer this summons. A service charge applies for online answers. No service charge applies to answers made written at the courthouse.

STATE COURT OF
DEKALB COUNTY, GA.
4/30/2021 2:57 PM
E-FILED
BY: Ember Colon

EXHIBIT “B”

**IN THE UNITED STATES DISTRICT COURT
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| RETAILING ENTERPRISES, LLC, d/b/a INVICTA |) | |
| |) | |
| Defendant. |) | |

DECLARATION OF AMY M. KING

PERSONALLY APPEARED before the undersigned attesting officer, duly authorized by law to administer oaths, Amy M. King (“Declarant”) who, after being duly sworn, states as follows:

1.

Declarant is over the age of eighteen (18) years, is laboring under no disability, and makes this Affidavit based upon her personal knowledge for all purposes permitted by law.

2.

Declarant is a Paralegal at Andre Kill & McCarthy, LLP and a fully commissioned and current Notary Public under Georgia law.

3.

On April 30, 2021, Declarant witnessed Luke A. Kill's signature on the original Complaint for Dispossession regarding Perimeter Mall, LLC v. Retailing Enterprises, LLC d/b/a Invicta, and notarized same.

4.

Declarant failed to notice that the sworn and subscribed statement listed above her signature mistakenly referred to the incorrect date of May 30, 2021 instead of the correct date of April 30, 2021.

5.

Thereafter, Declarant immediately filed the original Complaint on April 30, 2021 with DeKalb County State Court, Case Number 21SD00046.

6.

The Dispossession Proceeding Case Number 21SD00046 was sworn and subscribed before me by Mr. Kill on April 30, 2021, and the date above my signature should have read April 30, 2021, not May 30, 2021.

FURTHER DECLARANT SAITH NOT.

This 15th day of June, 2021.

Amy M. King
AMY M. KING

Sworn to and subscribed before me
this 15th day of June, 2021.

Richard H. Andre
NOTARY PUBLIC

